1950. **File No.** B. Home Guards 50

Legal Deptt
B **BRANCH**

Subject:— A Bill to amend the Bombay Home Guards Act, 1947

L.A Bill No VII of 1950

Bom. Act No XI of 1950

V. 22/6

File No. B. Home Guards/50

Gen. 104

Legal Department.

A requisite draft Bill together with a revised statement of objects and reasons is sent herewith.

2. The proposal to amend section 3 so as to give concurrent jurisdiction to the commandant General and the Commandant to make appointments of Home Guards is likely to lead to conflict of jurisdiction. Section 3 has therefore been amended so as to leave the power of appointment only to the Commandant but the exercise of that power has been made subject to the approval of the Commandant General. The Home Department should verify whether the amendment as made will achieve the object in view.

3. The Home Department, in para. 3 of its note on pages 50-51 ante, has suggested that the Commandant General and the Commandant may both be invested with power to suspend, reduce or dismiss members of Home Guards for neglect or refusal to obey his lawful order etc. It is further proposed that the Commandant General may be given the authority to fine to an amount not exceeding Rs. 50 and the Commandant to an amount not exceeding Rs. 25. This will again lead to conflict of jurisdiction. The better course would be to give power to the Commandant to impose the punishments referred to and give to the member of the Home Guard concerned right to appeal against the order of the Commandant to the Commandant General. The Commandant General may also be given power to revise on his own initiative or otherwise any order passed by the Commandant imposing a penalty on a Home Guard. A provision has accordingly been made in the draft Bill.

4. The expression "reasonable cause" has been judicially interpreted and has now acquired a definite meaning. The expression has therefore been used in section 7 of the Act.

5/7 (A.V.S) 41

5. The subject matter of the Bill falls under entries 1, 3, and 37 in List II and entry 2 in List III in the Seventh Schedule to the Government of India Act, 1935. The Bill does not require any previous sanction of the Governor but would reqiuire his recommendation under sub-section (3) of section 82 of the said Act. It is not necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of Indian Act, 1935.

O. C. Sd/-

Additional Secretary to Government.

U. R. to H. D. No. 13003 dated the 16th November 1949

C.G.R. 21-6-

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Legal Department.

As desired by H.D. the draft Bill has been revised so as to give power to the Commandant General to appoint members of the Home Guard to any post under his immediate control. Power has also been given to the Commandant General to dismiss etc. persons appointed by him and posts under his immediate control.

2. A new clause, namely, clause 9A has been added to the Bill to carry out the proposal made inthe linked H.D. file No. 54/6/ of 1949.

3. The proposal at 'y' on page 51 note was to insert the words "or training" after the work "duties" in line 6 of section 7(1) of the Act. The intention appears to be to punish a member of the Home Guards for neglecting or refusing to attend training as a member of Home Guards. Section 4 of the Act proposed to be substituted already provides that the Commandant orthe Commandant General may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of the Act and the rules made thereunder. Section 7 of the Act as it stands is sufficiently wide enough to cover the non-attendance for training as it provides thatif any member of the Home Guards, on being called out under section 4 without sufficient excuse neglects ror refusest o obey such order he shall, on conviction be punishable with simple imprisonment etc. It is not therefore necessary to amend section 7 specifically as proposed by H.D.

4. The subject-matter of the Bill falls under entries 1,2,5 and 64 in List II and entry 2 in List III in the Seventh Schedule to the Constitution. The Bill does not require any previous sanction but would require

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the Governor's recommendation under Article
k 207(3) of the Constitution. It is not
necessary to reserve the Bill for the considera-
tion of the President with reference to article
254(2) of the Constitution.

C.C. Sd/-

Additional Secretary to Government.

U.R. to H.D. No. 1600 dated the 4th February 1960.

C.G.R. 21-6-

IMMEDIATE.

No. 5399
Legal Department,
Bombay Castle, (Bombay No. R 1), 20th April 1950.

From

Shri J.R. Bhuiendhar,
Additional Secretary to the Government of Bombay, Legal Department.

To

The Private Secretary to the Governor of Bombay.

Subject: The Bombay Home Guards (Amendment) Bill, 1950.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bombay Home Guards (Amendment) Bill, 1950, which was read for the third time and passed at the sittings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 3rd and the 10th April 1950, respectively.

2. The subject matter of the Bill falls under entries 1, 2, 8, 37 and 64 in List II and entry 2 in List III in the Seventh Schedule to the Constitution of India. As the Bill does not contain any provision repugnant to the provisions of any earlier law made by Parliament or an existing law with respect to any of the matters enumerated in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the President with reference to article 254 (2) of the Constitution.

3. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

4. I also forward herewith one copy of each of the

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	items Nos.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	1, 2, & 4 and two copies of
3. Bill as read for the third time and passed by the Bombay Legislative Council.	item No. 3 of the papers
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 1st and 3rd April 1950 and of the Bombay Legislative Council dated the 10th April 1950.	

noted in the margin. The Bill was not referred to a Select Committee.

Yours faithfully,

Sd/-

Additional Secretary to Government.

Through

The Secretary to the Government of Bombay,

Home Department.

C.G.R. 21-6-

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No. P.S.G.- 1181

From

THE PRIVATE SECRETARY TO THE GOVERNOR OF BOMBAY

To

The Additional Secretary to Government,

Legal Department.

Government House,

Bombay April 24, 1950.

Subject: The Bombay Home Guards (Amendment) Bill, 1950.

Sir,

With reference to your letter No. 5399, dated April 20, 1950, I am directed to return herewith the authentic copy of the Bombay Home Guards (Amendment) Bill, 1950, with His Excellency the Governor's assent signified thereon.

Yours faithfully,

Sd/-

Private Secretary to the Governor of Bombay.

C.G.R. 21-6-

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ACTS.
.....Publication of the Bombay Home Guards (Amendment), Act, 1950.

GOVERNMENT OF BOMBAY.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5774
Bombay Fort Castle, 27th April 1950.

Letter to the Private Secretary to the Governor, No. 5399, dated the 20th April 1950.

Letter from the Private Secretary to the Governor No. P. S. G.- 1381, dated the 24th April 1950.

"With reference to your letter No. 5399, dated April 20, 1950, I am directed to return herewith the authentic copy of the Bombay Home Guards (Amendment) Bill, 1950, with His Excellency the Governor's assent signified thereon.

RESOLUTION : The law should be published as Bombay act No. XI of 1950, in the Bombay Government Gazette dated the 27th April 1950.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwareded to the Home Department.

By order of the Governor of Bombay,

Sd/- (
K.J. Pathare,
Assistant Secretary to Government.

To
The Manager, Government Central Press, Bombay, with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department.
The Home Department,
* The Orientel Translator to Government) with a copy of the Act.
The Bombay Legislature Department,
The Director of Publicity, Bombay.
The Enquiry Officer for the Secretariat)
Bombay.

* With five extra copies of the Act.

C.G.R. 21- 6-

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[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. VII OF 1950.

A Bill to amend the Bombay Home Guards Act, 1947.

Bom. III of 1947.

WHEREAS it is expedient to amend the Bombay Home Guards Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Home Guards (Amendment) Act, 1950.

Bom. III of 1947.

Amendment of section 2 of Bom. III of 1947.

2. In section 2 of the Bombay Home Guards Act, 1947, hereinafter called the said Act,—

(*1*) in sub-section (*1*), after the word "functions", the words "and duties" shall be inserted ;

(*2*) after sub-section (*2*), the following sub-section shall be inserted, namely :—

"(*3*) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State." ;

(*3*) in the marginal note to the said section, for the word "Commandant" the words "Commandant General and Commandant" shall be substituted.

Substitution of new section for section 3 of Bom. III of 1947.

3. For section 3 of the said Act, the following section shall be substituted, namely :—

Appointment of members.

"3. (*1*) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

(2) Notwithstanding anything contained in sub-section (1) the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control."

Substitution of new section for section 4 of Bom. III of 1947.

4. For section 4 of the said Act, the following section shall be substituted, namely :—

Functions and duties of members.

"4. (1) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.

(2) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the State."

Amendment of section 5 of Bom. III of 1947.

5. In section 5 of the said Act, in sub-section (2), after the word "functions" the words "or duties" shall be inserted.

Insertion of new sections 6A and 6B in Bom. III of 1947.

6. After section 6 of the said Act, the following sections shall be inserted, namely :—

Certificate, arms, etc., to be delivered up by person ceasing to be member.

"6A. (1) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him as such member.

(2) Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner of Police in Greater Bombay and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer or if the Magistrate or the police officer issuing the warrant so directs by any other person.

V of 1898

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property the person to whom the same was furnished.

Punishment of members for neglect of duty, etc.

6B. (1) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(*2*) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (*1*), he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(*3*) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.

(*4*) The Commandant General or the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (*1*) for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(*5*) Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.

(*6*) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court as if such fine were imposed by a Court.

(*7*) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force."

7. In section 7 of the said Act,— Amendment of section 7 of Bom. III of 1947.

(*1*) in sub-section (*1*), for the words "sufficient excuse" the words "reasonable cause" shall be substituted;

(*2*) after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-section (*1*) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.":

(*3*) in sub-section (*2*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be inserted;

(*4*) in sub-section (*3*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be added.

8. In section 8 of the said Act, for clause (*a*), the following shall be substituted, namely :— Amendment of section 8 of Bom. III of 1947.

"(*a*) providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General;"

Insertion of new section 9A in Bom. III of 1947.

9. After section 9 of the said Act, the following section shall be inserted, namely :—

Home Guards not disqualified from contesting elections to State Legislature or local bodies.

"9A. (*1*) A member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of the Bombay Legislative Assembly or the Bombay Legislative Council merely by reason of the fact that he is a member of the Home Guards.

(*2*) Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of any local authority merely by reason of the fact that he is a member of the Home Guards."

STATEMENT OF OBJECTS AND REASONS.

Under section 2 of the Bombay Home Guards Act, 1947, Government can appoint Commandants of Home Guards but there is no provision in the Act for the appointment of a Commandant General to co-ordinate the work of all the Home Guards in this State. It is, therefore, proposed to make a provision in the Act for the appointment of a Commandant General to co-ordinate the work of the area Commandants of Home Guards, to guide them in all matters relating to the recruitment, discipline, equipment and training of the Home Guards and to exercise general supervision. It has also been found by experience that (*i*) a considerable number of the Home Guards who are either discharged or dismissed from the organisation do not return their certificates, articles of uniform, etc., and that in such cases unauthorised use is made of them by the discharged or dismissed Home Guards, and (*ii*) some of the Home Guards absent themselves from the parades or training without reasonable cause in spite of repeated warnings. It is, therefore, proposed to make provision in the Act to take effective action against the defaulters. The Bill contains amendments which seek to give effect to these proposals. It also includes other amendments some of which are based on administrative considerations while others are of a minor character.

(Signed) MORARJI DESAI.

Dated the 23rd February 1950.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Bombay, dated the 25th February 1950.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. VII OF 1950.

A Bill to amend the Bombay Home Guards Act, 1947.

(As read for the third time and passed by the Legislative Assembly on the 3rd April 1950.)

Bom. III of 1947.

WHEREAS it is expedient to amend the Bombay Home Guards Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bombay Home Guards (Amendment) Act, 1950.

Bom. III of 1947.

Amendment of section 2 of Bom. III of 1947.

2. In section 2 of the Bombay Home Guards Act, 1947, hereinafter called the said Act,—

(*1*) in sub-section (*1*), after the word "functions" the words "and duties" shall be inserted;

(*2*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State.";

(*3*) in the marginal note to the said section, for the word "Commandant" the words "Commandant General and Commandant" shall be substituted.

Substitution of new section for section 3 of Bom. III of 1947.

3. For section 3 of the said Act, the following section shall be substituted, namely:—

Appointment of members.

"3. (*1*) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

MO-I Bk Hb 9—1

(2) Notwithstanding anything contained in sub-section (1) the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control."

Substitution of new section for section 4 of Bom. III of 1947.

4. For section 4 of the said Act, the following section shall be substituted, namely :—

Functions and duties of members.

"4. (1) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.

(2) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the State."

Amendment of section 5 of Bom. III of 1947.

5. In section 5 of the said Act, in sub-section (2), after the word " functions " the words " or duties " shall be inserted.

Insertion of new sections 6A and 6B in Bom. III of 1947.

6. After section 6 of the said Act, the following sections shall be inserted, namely :—

Certificate, arms, etc., to be delivered up by person ceasing to be member.

"6A. (1) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him as such member.

(2) Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner of Police in Greater Bombay and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer or if the Magistrate or the police officer issuing the warrant so directs by any other person. V. of 1898.

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

Punishment of members for neglect of duty, etc.

6B. (1) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(*2*) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (*1*), he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(*3*) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.

(*4*) The Commandant General or the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (*1*) for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(*5*) Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.

(*6*) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court as if such fine were imposed by a Court.

V of 1898.

(*7*) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force."

7. In section 7 of the said Act,— Amendment of section 7 of Bom. III of 1947.

(*1*) in sub-section (*1*), for the words "sufficient excuse" the words "reasonable cause" shall be substituted;

(*2*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-section (*1*) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.":

(*3*) in sub-section (*2*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be inserted;

(*4*) in sub-section (*3*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be added.

8. In section 8 of the said Act, for clause (*a*), the following shall be substituted, namely:— Amendment of section 8 of Bom. III of 1947.

"(*a*) providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General;"

Insertion of new section 9A in Bom. III of 1947.

9. After section 9 of the said Act, the following section shall be inserted, namely :—

Home Guards not disqualified from contesting elections to State Legislature or local bodies.

"9A. (*1*) A member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of the Bombay Legislative Assembly or the Bombay Legislative Council merely by reason of the fact that he is a member of the Home Guards.

(*2*) Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of any local authority merely by reason of the fact that he is a member of the Home Guards."

STATEMENT OF OBJECTS AND REASONS.

Under section 2 of the Bombay Home Guards Act, 1947, Government can appoint Commandants of Home Guards but there is no provision in the Act for the appointment of a Commandant General to co-ordinate the work of all the Home Guards in this State. It is, therefore, proposed to make a provision in the Act for the appointment of a Commandant General to co-ordinate the work of the area Commandants of Home Guards, to guide them in all matters relating to the recruitment, discipline, equipment and training of the Home Guards and to exercise general supervision. It has also been found by experience that (*i*) a considerable number of the Home Guards who are either discharged or dismissed from the organisation do not return their certificates, articles of uniform, etc., and that in such cases unauthorised use is made of them by the discharged or dismissed Home Guards, and (*ii*) some of the Home Guards absent themselves from the parades or training without reasonable cause in spite of repeated warnings. It is, therefore, proposed to make provision in the Act to take effective action against the defaulters. The Bill contains amendments which seek to give effect to these proposals. It also includes other amendments some of which are based on administrative considerations while others are of a minor character.

MORARJI DESAI.

Dated the 23rd February 1950.

Mo-1 Bk Hb 9 --2

Government of Bombay

LEGAL DEPARTMENT.

[L. A. BILL No. VII OF 1950.]

(As read for the third time and passed by the Legislative Assembly on the 3rd April 1950.)

A Bill to amend the Bombay Home Guards Act, 1947.

[Shri. Morarji Desai, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. VII OF 1950.

A Bill to amend the Bombay Home Guards Act, 1947.

(As read for the third time and passed by the Legislative Assembly on the 3rd April 1950.)

(As read for the third time and passed by the Legislative Council on the 10th April 1950.)

Bom. III of 1947.

WHEREAS it is expedient to amend the Bombay Home Guards Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Home Guards (Amendment) Act, 1950.

Amendment of section 2 of Bom. III of 1947.

Bom. III of 1947.

2. In section 2 of the Bombay Home Guards Act, 1947, hereinafter called the said Act,—

(*1*) in sub-section (*1*), after the word "functions" the words "and duties" shall be inserted;

(*2*) after sub-section (*2*), the following sub-section shall be inserted, namely :—

"(*3*) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State.";

(*3*) in the marginal note to the said section, for the word "Commandant" the words "Commandant General and Commandant" shall be substituted.

Substitution of new section for section 3 of Bom. III of 1947.

3. For section 3 of the said Act, the following section shall be substituted, namely :—

Appointment of members.

"3. (*1*) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

MO-1 Bk Hb 35—1

(2) Notwithstanding anything contained in sub-section (1) the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control."

Substitution of new section for section 4 of Bom. III of 1947.

4. For section 4 of the said Act, the following section shall be substituted, namely :—

Functions and duties of members.

"4. (1) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.

(2) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the State."

Amendment of section 5 of Bom. III of 1947.

5. In section 5 of the said Act, in sub-section (2), after the word "functions" the words "or duties" shall be inserted.

Insertion of new sections 6A and 6B in Bom. III of 1947.

6. After section 6 of the said Act, the following sections shall be inserted, namely :—

Certificate, arms, etc., to be delivered up by person ceasing to be member.

"6A. (1) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him as such member.

(2) Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner of Police in Greater Bombay and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer or if the Magistrate or the police officer issuing the warrant so directs by any other person. V of 1898.

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

Punishment of members for neglect of duty, etc.

6B. (1) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(*2*) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (*1*), he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(*3*) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.

(*4*) The Commandant General or the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (*1*) for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(*5*) Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.

(*6*) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court as if such fine were imposed by a Court. V of 1898.

(*7*) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force."

7. In section 7 of the said Act,— Amendment of section 7 of Bom. III of 1947.

(*1*) in sub-section (*1*), for the words "sufficient excuse" the words "reasonable cause" shall be substituted;

(*2*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-section (*1*) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.":

(*3*) in sub-section (*2*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be inserted;

(*4*) in sub-section (*3*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be added.

8. In section 8 of the said Act, for clause (*a*), the following shall be substituted, namely:— Amendment of section 8 of Bom. III of 1947.

"(*a*) providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General;"

Insertion of new section 9A in Bom. III of 1947.

9. After section 9 of the said Act, the following section shall be inserted, namely :—

Home Guards not disqualified from contesting elections to State Legislature or local bodies.

"9A. (*1*) A member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of the Bombay Legislative Assembly or the Bombay Legislative Council merely by reason of the fact that he is a member of the Home Guards.

(*2*) Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of any local authority merely by reason of the fact that he is a member of the Home Guards."

Government of Bombay

LEGAL DEPARTMENT.

[L. A. BILL No. VII OF 1950.]

(As read for the third time and passed by the Legislative Assembly on the 3rd April 1950.)

(As read for the third time and passed by the Legislative Council on the 10th April 1950).

A Bill to amend the Bombay Home Guards Act, 1947.

[Shri. MORARJI DESAI, M.L.A.]

MG-I Bk Hb 35—2

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

Acts of the Bombay Legislature and Ordinances promulgated by the Governor.

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The following Act of the Bombay Legislature having been assented to by the Governor on the 22nd April 1950 is hereby published for general information.

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XI OF 1950.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 27th April 1950.)

An Act to amend the Bombay Home Guards Act, 1947.

WHEREAS it is expedient to amend the Bombay Home Guards Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Bom. III of 1947.

1. This Act may be called the Bombay Home Guards (Amendment) Act, 1950. Short title.

Bom. III of 1947.

2. In section 2 of the Bombay Home Guards Act, 1947, hereinafter called the said Act,— Amendment of section 2 of Bom. III of 1947.

(*1*) in sub-section (*1*), after the word "functions" the words "and duties" shall be inserted;

(*2*) after sub-section (*2*), the following sub-section shall be inserted, namely :—

"(*3*) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State.";

(*3*) in the marginal note to the said section, for the word "Commandant" the words "Commandant General and Commandant" shall be substituted.

Substitution of new section for section 3 of Bom. III of 1947.

3. For section 3 of the said Act, the following section shall be substituted, namely :—

Appointment of members.

"3. (*1*) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

(*2*) Notwithstanding anything contained in sub-section (*1*) the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control."

Substitution of new section for section 4 of Bom. III of 1947.

4. For section 4 of the said Act, the following section shall be substituted, namely :—

Functions and duties of members.

"4. (*1*) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.

(*2*) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the State."

Amendment of section 5 of Bom. III of 1947.

5. In section 5 of the said Act, in sub-section (*2*), after the word "functions" the words "or duties" shall be inserted.

Insertion of new sections 6A and 6B in Bom. III of 1947.

6. After section 6 of the said Act, the following sections shall be inserted, namely :—

Certificate, arms, etc., to be delivered up by person ceasing to be member.

"6A. (*1*) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him as such member.

(*2*) Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner of Police in Greater Bombay and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer or if the Magistrate or the police officer issuing the warrant so directs by any other person. V of 1898.

(*3*) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

Punishment of members for neglect of duty, etc.

6B. (*1*) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(*2*) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (*1*), he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(*3*) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.

(*4*) The Commandant General or the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (*1*) for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(*5*) Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.

V of 1898.

(*6*) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court as if such fine were imposed by a Court.

(*7*) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force."

Amendment of section 7 of Bom. III of 1947.

7. In section 7 of the said Act,—

(*1*) in sub-section (*1*), for the words "sufficient excuse" the words "reasonable cause" shall be substituted;

(*2*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-section (*1*) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.":

(3) in sub-section (2), after the word, brackets and figure "sub-section (1)" the word, brackets, figure and letter "or (1A)" shall be inserted;

(4) in sub-section (3), after the word, brackets and figure "sub-section (1)" the word, brackets, figure and letter "or (1A)" shall be added.

Amendment of section 8 of Bom. III of 1947.

8. In section 8 of the said Act, for clause (a), the following shall be substituted, namely:—

"(a) providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General;"

Insertion of new section 9A in Bom. III of 1947.

9. After section 9 of the said Act, the following section shall be inserted, namely:—

Home Guards not disqualified from contesting elections to State Legislature or local bodies.

"9A. (1) A member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of the Bombay Legislative Assembly or the Bombay Legislative Council merely by reason of the fact that he is a member of the Home Guards.

(2) Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of any local authority merely by reason of the fact that he is a member of the Home Guards."

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